

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CAROL THERESA SMITH,)	
)	2:03-cv-02570-GEB
Plaintiff,)	
)	
v.)	<u>TRANSMITTAL TO PARTIES OF</u>
)	<u>TRIAL DOCUMENTS</u>
SAN JOAQUIN COUNTY SHERIFF'S)	
SERGEANT WILLIAM DORCEY; and)	
SAN JOAQUIN COUNTY SHERIFF'S)	
DEPUTY MICHAEL VAN GROUW,)	
)	
Defendants.)	
_____)	

Attached are proposed jury instructions. It is assumed that the parties stipulate that Defendants acted under color of law, so this element of Plaintiff's claims has been omitted from the attached instructions. Cf. Achor v. Riverside Golf Club, 117 F.3d 339, 341-42 (7th Cir. 1997) (indicating that instructions should help jurors concentrate on the issues at hand).

Defendants' proposed affirmative defense instructions are not included in the attached instructions because affirmative defenses have not been preserved for trial in the FPO. As provided in the FPO:

1 Any legal theory of relief or affirmative
2 defense asserted in the pleadings but not
3 preserved for trial in . . . the [FPO] cannot
4 be raised during the trial. Therefore, to
5 preserve an issue for trial, and to be entitled
6 to jury instructions on that issue, the issue
7 shall be identified and preserved in [the FPO].
8 Failure to do so dismisses, waives or abandons
9 that issue, claim or defense. Hotel Emp., et
10 al. Health Tr. v. Elks Lodge 1450, 827 F.2d
11 1324, 1329 (9th Cir. 1987) ("Issues not
12 preserved in the pretrial order are eliminated
13 from the action.").

14 (FPO at 3.)

15 The voir dire questions and proposed verdict form are
16 also attached.

17 Dated: October 4, 2005

18 /s/ Garland E. Burrell, Jr.
19 GARLAND E. BURRELL, JR.
20 United States District Judge
21
22
23
24
25
26
27
28